

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
(Richmond Division)**

**SAMUEL A. BUTTARI, SR. AND  
JAMIE MCCANN, CO-ADMINISTRATORS  
OF THE ESTATE OF  
RYAN DYLAN BUTTARI, DECEASED,**

**Plaintiffs,**

**V.**

MICHAEL EVERETTE, *et al.*

**Defendants.**

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**Case No. 3:21-cv-00070-DJN**

**MOTION TO DISMISS AMENDED COMPLAINT**

COMES NOW the Defendant, 88 FREIGHT, LLC (“Defendant” or “this Defendant”), and pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, hereby files its Motion to Dismiss Plaintiffs’ Amended Complaint, respectfully stating as follows:

1. Plaintiffs cannot maintain any claims against this Defendant as Plaintiffs cannot establish the existence of an agency relationship that would impose *respondeat superior* liability against this Defendant.

2. Plaintiffs cannot maintain claims for gross negligence, willful and wanton conduct, or punitive damages against Defendants as alleged in Count II of their Amended Complaint because Plaintiffs have failed to allege facts that rise to the level of conduct required to establish such claims.

In support hereof, this Defendant adopts and incorporates its Memorandum in support of this motion, filed contemporaneously herewith.

WHEREFORE, Defendant 88 FREIGHT, LLC respectfully requests that this Court dismiss Plaintiffs' Amended Complaint against it, in its entirety, with prejudice.

Respectfully submitted this 25<sup>th</sup> day of February 2021.

88 FREIGHT, LLC,

By Counsel

/s/ Signed Electronically

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 25<sup>th</sup> day of February, 2021, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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/s/ Signed Electronically

Lindsey A. Lewis